

**DUE PROCESS HEARING PANEL
MISSOURI STATE BOARD OF EDUCATION
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

COLE COUNTY R-II SCHOOL DISTRICT,)
)
 Petitioner,)
)
vs.)
)
 , by and through his parents,)
and)
)
 Respondents.)

DECISION COVER SHEETS

This is the final decision of the hearing panel in an impartial due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415(f) (1997), and Missouri law, §162.961.3 RSMo.

THE PARTIES

Student: .

Petitioner: COLE COUNTY R-II SCHOOL DISTRICT

Respondents: , by and through his parents, .

The petitioner was represented by:

Teri B. Goldman
Attorney at Law
36 Four Seasons Center, #136
Chesterfield, MO 63017.

The respondents were not represented by counsel.

HEARING OFFICERS:

Kenneth M. Chackes
Dr. Terry Allee
Jean Adams

Hearing Chair
Panel Member selected by petitioner
Panel Member selected by respondents

RELEVANT DATES

Request for due process hearing: May 11, 2005.

Date of hearing: July 6, 2005.

Date of Decision: August 15, 2005.

Explanation of deviation from 45 day time-line:

The school district submitted a request for a due process hearing which was received by the Missouri Department of Elementary and Secondary Education (DESE) on May 11, 2005. The original deadline for hearing the case and completing and mailing a written decision, therefore, was June 27, 2005, 45 days from the date DESE received the request.

The district requested an extension of the deadline for decision until August 15, 2005, due to the availability of the hearing officers and parties for a hearing. After consultation with the parents, on June 3, 2005, I granted that request and scheduled the hearing for July 6 and 7, 2005.

DECISION

This is the final decision of the hearing panel in an impartial due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415(f) (1997), and Missouri law, §162.961.3 RSMo.

STATEMENT OF ISSUES

The Cole County R-II School District initiated this proceeding in response to a request from the parents, that the district provide the student with an independent educational evaluation at public expense. The school district refused the parents' request and instead submitted a request for a due process hearing to seek a determination of the following issues:

1. Whether the district's most recent evaluation of the student, dated April 21, 2005, was appropriate, and therefore, the parents are not entitled to an independent educational evaluation at public expense.
2. Whether the school district's determination in April 2005, that the student is not eligible for special education services as a student with a disability, is correct.

Ex. P-22 at 74.

FINDINGS OF FACT

1. The student in this case, who will be referred to only as "the student" to protect his privacy, is a public school student of the Cole County R-II School District. At the time of hearing, the student had just completed his fifth grade year in the school district. The student's mother was a special education teacher, working with severely disabled students in a Missouri State School for five years during the 1990s.

2. The student attended the Cole County R-II public schools since 1999, when he was in kindergarten. From kindergarten through third grade, the parents and the school district agreed that the student performed well in school, and his parents were pleased with his progress. On his third grade report card, the student received almost all As in his coursework, with the exception of one B- in reading for the first quarter and one B- in spelling for the fourth quarter. Ex. P-3 at 21.
3. During fourth grade, however, the parents became concerned about the student's education. On the student's report card for that year, he received mostly As, some Bs, and one C- in the area of spelling for the second quarter. Ex. P-3 at 21. The parents observed, however, that their son was having a great deal of difficulty in school due to the behavior of his fourth grade teacher, which according to the student included frequent yelling and screaming at other students. The mother testified that the student was crying nightly about the teacher's behavior, that he was under great stress, and that he had headaches at school but the teacher would not let him go to the office for relief. The mother also testified that the stress caused the student difficulty with his school work. She stated that every night the student would cry about the school day and the amount of homework he had to complete. She explained that she would spend hours with the student every night going over all of the work that had been covered during the school day and all the homework that was assigned.
4. The student's mother also testified that in the process of working with the student at home she observed that he had difficulty reading, comprehending what he read, and understanding directions. During the fall of the student's fourth grade year, in October

2003, the parents requested that the school district evaluate him because of his difficulty in reading and writing. Ex. P-4; P-8 at 34. In response to this request, the district provided the parents with notice of their procedural rights (procedural safeguards) under the IDEA. Ex. P-4 at 24-25.

5. On or about October 29, 2003, the district provided the parents with a formal notice of action, proposing to conduct an initial evaluation of the student. Ex. P-5 at 26. The district witnesses testified that the district does not always evaluate students in response to a parent request, but the district decided to test this student because of his mother's concerns and her insistence that he be tested. Tr. 41. The district's witnesses also testified that the district had no reason to believe that the student had any IDEA disability. Tr. 41, 46. On the district's form proposing to evaluate the student, however, the district stated "the team felt there was reason to suspect a disability." Ex. P-5 at 26.
6. The pre-evaluation documentation shows that the district provided the student with Title I reading services during first, third and fourth grade. Tr. 43-44. Title I reading programs are designed to help students who might be somewhat behind in their reading skills, but that program is not special education or part of the process to identify students with special education needs. Tr. 42-43. The district maintained that the student did not require Title I services and he did not meet district's formal criteria to be placed in that program. Tr. 44-45. The district testified that the student received those services at his parents' request and because his participation in Title I did not exclude other students' participation. Tr. 44-45.

7. In November 2003, the district conducted the student's initial evaluation to determine whether he had a specific learning disability. Ex. P-6 at 29-30; Ex. P-8 at 33-36; Tr. 46, 48. According to the district, under the State's criteria, to qualify as a student with a learning disability, the student must (1) demonstrate a 1.5 standard deviation between IQ and achievement, (2) must show an adverse effect on educational performance, and (3) must show a need for special education. Tr. 47.
8. As part of the evaluation, the district administered the WISC-III test of intelligence. Ex. P-6. On that instrument, the student achieved a verbal IQ of 88, a performance IQ score of 95 and a full-scale IQ score of 90. Ex. P-6. The student's verbal and performance IQ scores did not differ significantly. Ex. P-6 at 30. Based on those scores, the student's intelligence was determined to be in the average range. Ex. P-6 at 30.
9. On or about November 11, 2003, the district convened a multidisciplinary team to review the results of the student's initial evaluation and prepare a report that reflected those results. Ex. P-8. The parents attended as did a special education teacher, Sandra Thrasher; the district's special education director, Suzanne Foshage; and a regular education teacher, Suzanne Holland. Ex. P-8; Tr. 49, 51, 53. The report that was prepared includes the scores of the WISC-III that was administered as well as the Mini-Battery of Achievement. Ex. P-8 at 33; Tr. 48. On the Mini-Battery, the student obtained a standard score of 93 and a grade equivalency of 3.6 in reading, and a standard score of 83 and a grade equivalency of 2.7 in writing. Ex. P-8 at 34; Tr. 50. The district determined that the Mini-Battery did not show any concerns in the area of reading and did not test further in that area. Tr. 50-51. Because of the relatively lower score in writing, however, the district

writing, however, the district administered the Test of Written Language. Ex. P-8 at 35; Tr. 51. On that test, the student achieved a standard score of 90 in contrived writing, a standard score of 100 in spontaneous writing, and an overall writing score of 96. Ex. P-8 at 35. As noted in the report and based on those scores, the student's skills in vocabulary and writing logically were at or above grade level and he did not show any discrepancy between ability and achievement. Ex. P-8 at 35; Tr. 51. His overall writing was in the average range. Ex. P-8 at 35. Based on his IQ of 90, the student's criterion for the existence of a learning disability was 68. Ex. P-8 at 36; Tr. 49-50. Based on his test scores, the team concluded that the student did not meet eligibility criteria to be considered a student with a disability in any category. Ex. P-8 at 33, 35-36; Tr. 49. The parents signed in apparent agreement. Ex. P-8 at 33; Tr. 52. Ms. Foshage testified that she explained to the parents before they signed that their signatures indicated agreement with the team's conclusion. Tr. 52.

10. On or about November 11, 2003, the district provided the parents with a written notice of action indicating the student's ineligibility for services under IDEA. Ex. P-9; Tr. 53. The parents did not take any immediate action that revealed that they were in disagreement with the team's decision. Tr. 53.
11. During the spring of his fourth grade year, the student took the statewide Missouri Assessment Program (MAP) tests in social studies and math, and achieved scores of "nearing proficiency" in both areas. Ex. P-17 at 53.
12. During the 2004-05 school year, the student attended the district as a fifth grade student. On his report card for that year, the student received mostly As and a few Bs, but during

fourth quarter, he received a C in reading. Ex. R-1 Tr. 105. On or about March 7, 2005, the student took the STAR Reading test and tested at a 5.4 grade equivalent level in reading. Ex. P-18. The district explained that the STAR Reading test is a computerized reading comprehension test that students take and that generates a grade level reading comprehension score and that the regular education teachers use the scores to assess students' progress in reading. Tr. 61.

13. In the spring of fifth grade, in March 2005, the parents again requested that the school district evaluate the student to determine whether he was eligible special education services. They also had the student evaluated privately by a pediatric neurologist, Dr. Harvey Cantor. On or about March 16, 2005, Dr. Cantor wrote a note regarding the student on a standard prescription pad indicating that the student, "requires special educational assistance to assist him in his area of neurological deficit, reading." Ex. P-11; Tr. 54. The mother provided the note to Ms. Foshage, the district's special education director, on March 17, 2005. Tr. 54-55. The district then initiated a second referral for special education evaluation at the parents' request and also attempted to get a copy of Dr. Cantor's full report. Tr. 55. Despite its efforts and the parents' cooperation, the district was unable to get a copy of that report before it completed its evaluation. Tr. 55-56; Ex. P-12.
14. On or about March 17, 2005, the district again provided the parents with a written notice of action proposing to conduct an initial evaluation of the student in reading and written expression based on his parents' concern that the student might have a disability. Ex. P-13 at 41; Tr. 57. The district continued to maintain that it did not suspect that the student

might have a disability, but agreed to evaluate based on the parents' insistence that he be tested again. Tr. 57.

15. On or about March 31, 2005, the district administered the Woodcock-Johnson III Test of Achievement. Ex. P-6 at 31; Tr. 64. On that test, the student achieved the following standard scores: 85 in broad reading, 87 in basic reading skills, 92 in reading comprehension, and 87 in written expression. Ex. P-6 at 31; Tr. 64.
16. On or about April 18, 2005, the district convened a multidisciplinary team to review the results of the second evaluation. Ex. P-14; Tr. 58. The student's mother attended, along with special education director Foshage, special education teacher Thrasher, and regular education teachers Diane Eggen and Amy Marquart. Ex. P-14 at 44; Tr. 58. To determine the student's eligibility, the district used the WISC-III IQ score from the previous year's testing. Ex. P-14 at 45; Tr. 58-59. Based on that score, the student's criterion for the existence of a learning disability remained at 68. Tr. 59. For the 2005 evaluation, Sandra Thrasher administered sections of the Woodcock-Johnson-III test of academic achievement. Ex. P-6 at 31; Ex. P-14 at 45; Tr. 59. The student achieved the following standard scores on that test: basic reading – 87; reading comprehension – 92; written expression – 98. Ex. P-6 at 31; Ex. P-14 at 45; Tr. 59. The team also considered the results of the student's other standardized testing, including his fourth grade MAP test, on which he achieved scores of "nearing proficiency" in math and social studies (Ex. P-14 at 46; Tr. 60, 65) and his STAR Reading scores during fifth grade, which increased from grade level 3.9 to 5.4 (Ex. P-14 at 46; *see also* Ex. P-18 at 56; Tr. 60-62). The team also looked at the student's grades during the first three quarters of fifth grade, all As and Bs.

Bs. Ex. P-14 at 46. At the conclusion of the meeting and after reviewing the results of the testing and other information regarding the student's performance, the team again concluded that the student did not meet eligibility criteria to be considered a student with a disability in any area. Ex. P-14 at 44, 46; Tr. 59-60. The student's mother indicated her disagreement at the meeting. Ex. P-14 at 44; Tr. 60. On or about April 19, 2005, the district provided the parents with a formal written notice of action showing that the student was ineligible for special services under any categorical diagnosis. Ex. P-15; Tr. 63.

17. The parents then requested an independent educational evaluation at public expense. On or about May 11, 2005, the district initiated this due process proceeding against the parents in response to the parents' request for an independent evaluation. Ex. P-22; Tr. 6; Tr. 66-67.
18. On May 16, 2005, the student took another STAR Reading test and achieved a grade equivalency 4.3. Ex. R-4; Tr. 62, 114-15, 131. School staff discussed that lower score and his classroom teacher, Diane Eggen, stated she believed that the student rushed through the test. Tr. 62. As a result, he was asked to retake the test with another teacher, but she reported that he rushed through the second administration as well. Tr. 62-63. The district provided testimony that such behavior was not characteristic of the student's typical effort and the previous STAR scores are a better reflection of his actual reading level. Tr. 63, 131. At hearing, Ms. Foshage testified that the test was administered at about the same time that the due process proceedings were initiated. Tr. 63.

19. After the end of the student's fifth grade year, on or about June 27, 2005, the parents provided the district with Dr. Cantor's full letter-report, dated March 15, 2005. Ex. R-9; Tr. 93-94. In that letter, Dr. Cantor indicated the student had a diagnosis of dyslexia secondary to encephalopathy, etiology undetermined. Ex. R-9. In his letter, Dr. Cantor said he "guesstimated" the student's IQ at 107. Ex. R-9. Dr. Cantor also stated that the student read from the Gray's Oral Reader at the mid-third grade level. Ex. R-9. Dr. Cantor did not conduct any type of formal achievement testing to determine whether there was a severe discrepancy between the student's ability and achievement, as the District is required to do to determine the existence of a learning disability. Tr. 94.
20. The mother testified generally that the parents believe that the student needs special help in reading and writing. She said he continued to achieve good grades in school during fourth and fifth grades due to all the help the parents provided at him at home. The mother stated that toward the end of fifth grade, they slacked off in certain areas, and as a result, the student received a C on his report card. She testified that the student was heartbroken when he got that grade, but felt good when he learned that Dr. Cantor diagnosed him with dyslexia. According the mother, they learned about dyslexia at home and it helped the student to have an explanation for his difficulties. The district, on the other hand, takes the position that the student performs well at school without special education services and that it would be harmful to subject the student to anymore testing because the testing sends a negative message to the student. The hearing panel's role in this case is not to determine whether the student would be better off with more testing or a learning disability diagnosis. As explained below, we must decide whether the district is legally required to

is legally required to provide the student with an independent educational evaluation because the district's 2005 evaluation was not appropriate.

21. The hearing was held in this case on July 6, 2005. The district presented the following witnesses: Suzanne Foshage, Diane Eggen and Title I teacher Beth Isenberg. The parents participated and presented the student's mother as their witness. Both parties had an opportunity to present evidence and to cross-examine witnesses. The hearing was closed at the parents' request. Tr. 7. Petitioner's Exhibits P-1 through P-22 were admitted. Tr. 32. Respondents' Exhibits R-1 through R-10 were admitted.

CONCLUSIONS OF LAW

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400, *et seq.*, and Missouri law, §162.961, RSMo. This Hearing Panel has jurisdiction pursuant to 20 U.S.C. §1415 and §162.961, RSMo.

Congress's goal in passing the IDEA, was that "all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. §1400(c). *Raymond S. v. Ramirez*, 918 F.Supp. 1280, 1286 (D. Iowa, 1996). Under the IDEA, the federal government provides financial assistance to the states and local school districts. "To receive federal funding, however, the participating states must comply with the IDEA's procedures guaranteeing a reasonable probability of educational benefits and supportive services at public expense. 20 U.S.C. §1412; *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 188-89, 73 L. Ed. 2d 690, 102 S. Ct. 3034 (1982)." *Raymond S., supra*, 918 F.Supp. at 1287.

“In order to receive the special education mandated by IDEA, a child must first be classified as . . . ‘disabled.’” *Raymond S., supra*, 918 F.Supp. at 1287. To determine whether or not a student is “disabled” the IDEA requires school districts to “ensure that a full and individual evaluation is conducted for each child being considered for special education and related services” and that such an evaluation be conducted “before the initial provision of special education and related services.” 34 C.F.R. §§ 300.320(a); 300.531. The IDEA and the Missouri State Plan for Part B of the IDEA contain extensive provisions describing how the evaluation process should be carried out. *See* 34 C.F.R. §§300.530-543; State Plan, Regulation III.

The hearing panel next will address the two issues raised by the school district in its request for a due process hearing. The burden of proving compliance with the IDEA is on the school district. Generally the party who initiates a claim has the burden of proving its position is correct. Even in IDEA cases brought by parents, however, the United States Court of Appeals for the Eighth Circuit, which governs the federal courts in Missouri, places the burden of proof on the school district. *E.S. v. Independent Sch. Dist. No. 196*, 135 F.3d 566, 569 (8th Cir. 1998); *see also Welton v. Liberty 53 Sch. Dist.*, 35 IDELR 63 (W.D. Mo. 2001) (including parents’ challenge to district’s evaluation and diagnosis).

I. WHETHER THE SCHOOL DISTRICT’S APRIL 2005 EVALUATION OF THE STUDENT WAS APPROPRIATE AND WHETHER THE PARENTS ARE ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE.

Among the rights that Congress established for parents, the IDEA requires that states establish procedures which enable parents to obtain ‘an independent evaluation of the child.’ 20 U.S.C. §1415(b)(1). Federal regulations governing independent educational evaluations specify the conditions under which parents have a right to such an evaluation “at public expense.” 20

C.F.R. §300.502; *Raymond S.*, *supra*, 918 F.Supp. at 1289. When a school district is presented with a parental request for an independent educational evaluation at public expense, the district must, “without unnecessary delay,” either pay for the evaluation as requested, or initiate a due process proceeding “to show that its evaluation is appropriate.” 34 C.F.R. §300.502(b)(2). If a district initiates a due process proceeding and prevails, the parent still has the right to obtain an independent evaluation, but not at public expense. 34 C.F.R. §300.502(b)(3). An independent educational evaluation that the parent obtains at private expense must be considered by the school district. 34 C.F.R. §300.502(c).

When a school district has initiated a due process hearing “to show that its evaluation is appropriate,” the hearing panel must determine whether the evaluation meets the criteria set forth by the IDEA. This inquiry focuses primarily on procedural compliance, rather than delving into the substance of the evaluation itself. *See, e.g., Grapevine-Colleyville Indep. Sch. Dist. v. Danielle R.*, 31 IDELR 103 (N.D. Tex. (1999)); *Judith S. v. Board of Educ. of Community Unit Sch. Dist. No. 200*, 28 IDELR 728 (N.D. Ill. 1980). The specific evaluation procedures that districts must follow are set out in 34 C.F.R. §300.532, which provides:

Each public agency shall ensure, at a minimum, that the following requirements are met:

(a)(1) Tests and other evaluation materials used to assess a child under Part B of the Act --

(I) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

(ii) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

(2) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring

measuring the child's English language skills.

(b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining --

(1) Whether the child is a child with a disability under § 300.7; and

(2) The content of the child's IEP.

©)(1) Any standardized tests that are given to a child --(I) Have been validated for the specific purpose for which they are used; and

(ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

(2) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

(d) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

(g) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(h) In evaluating each child with a disability under §§ 300.531-300.536, the evaluation is sufficiently comprehensive to identify all of the child's special

education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(i) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(j) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

In this case, the panel finds that the school district's April 2005 evaluation of the student was appropriately conducted under those requirements. That does not end our inquiry with respect to the appropriateness of the district's evaluation. In addition to the general evaluation requirements, when evaluating children suspected of having specific learning disabilities, the IDEA regulations contain additional requirements. 34 C.F.R. §300.540-300.543.

For students suspected of learning disabilities, the evaluation team must include the child's regular education teacher. 34 C.F.R. §300.540. The district's 2005 evaluation team for the student in this case included two regular education teachers, Diane Eggen and Amy Marquart. Ex. P-14 at 44; Tr. 58. The evaluation team also must include a person qualified to conduct individual diagnostic examinations of children. 34 C.F.R. §300.540. The evaluation teams in question here included Sandra Thrasher, who administered the student's Woodcock-Johnson III Tests of Achievement in March 2005. Ex. P-6 at 31; Ex. P-8 at 33; Ex. P-14 at 44.

The federal regulations also contain additional documentation requirements for evaluations of children with suspected learning disabilities, contained in 34 C.F.R. §300.543, which provides:

(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by Sec. 300.534(a)(2), must include a statement of -

- (1) Whether the child has a specific learning disability;
 - (2) The basis for making the determination;
 - (3) The relevant behavior noted during the observation of the child;
 - (4) The relationship of that behavior to the child's academic functioning;
 - (5) The educationally relevant medical findings, if any;
 - (6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and
 - (7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.
- (b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

The school district's report in this case meets the requirements of that regulation to the extent that they are applicable to the student's evaluation. Ex. P-14; Ex. P-6 at 31.

A preponderance of the evidence demonstrated that the Cole County R-II School District's April 2005 initial evaluation of the student was appropriate. Generally, the evaluation was conducted by multidisciplinary team of qualified examiners; the evaluation was multi-dimensional in that it considered all areas of functioning and assessed all areas of the student's suspected disability; the evaluation was multi-faceted in that it used a variety of assessment procedures: norm referenced, criterion referenced, curriculum based, rating scales, observation, etc.; the instruments were reliable and validated for the purposes used; appropriate timelines were followed and procedural protections were afforded to the parents. In addition, the results of the

the evaluation were consistent with other information regarding the student's school performance. Moreover, the district timely initiated due process in response to the parents' request.

The evidence at hearing also established that the independent evaluation obtained by the parents from Dr. Cantor was not conducted under the standards established by the IDEA and state special education law. Dr. Cantor's report indicates that he did not conduct any standardized testing and it is not apparent from the report that he conducted any formal testing.

The district's April 2005 evaluation complied with the relevant IDEA standards. Therefore, the parents are not entitled to an independent evaluation at public expense.

II. WHETHER THE SCHOOL DISTRICT'S DETERMINATION THAT THE STUDENT IS NOT ELIGIBLE AS A STUDENT WITH A DISABILITY WAS CORRECT.

Under the IDEA, a child with a disability is defined as

a child evaluated in accordance with §§300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance . . . , an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

34 C.F.R. §300.7; *see also* 20 U.S.C. §1401(3)(A).

Additionally, 34 C.F.R. §300.541 establishes the criteria for the determination of a specific learning disability. As stated in the federal regulations, a team may determine that such a disability exists if (1) the child does not achieve commensurate with his age and ability levels, and (2) the team finds that the child has a severe discrepancy between achievement and intellectual ability in one or more of the defined areas. 34 C.F.R. §300.541. In 2002, the Office of Special Education Programs of the United States Department of Education (OSEP) clarified that the

that the criteria under 34 C.F.R. §300.541 requires that there be a “severe discrepancy” between achievement and intellectual ability to support a finding of a specific learning disability. *Letter to Baumtrog*, 39 IDELR 159 (OSEP 2002). In addition, OSEP advised that it is the role of the state educational agency to establish the state’s standards for determining eligibility. *Id.*

Pursuant to the Missouri State Plan for Part B of the IDEA, the Missouri Department of Elementary and Secondary Education has defined a learning disability as follows:

A child has a specific learning disability when:

- A. the child does not achieve commensurate with his or her age and ability levels in one or more areas listed in B below if provided with learning experiences appropriate for the child’s age or ability level;
- B. the child displays observable characteristics that indicate deficits in basic psychological processing. The team finds a child has a severe discrepancy between achievement and intellectual ability in one or more the following areas. A severe discrepancy is defined as 1.5 standard deviation between cognitive and academic areas.

State Plan at 18.

A doctor’s medical diagnosis of conditions such as dyslexia or attention deficit disorder, is insufficient to qualify a student under the IDEA. Where a student does not satisfy the severe discrepancy requirement and is performing adequately in the regular education environment, that student is not eligible under IDEA. *See, e.g., Welton v. Liberty 53 Sch. Dist.*, 35 IDELR 63 (W.D. Mo. 2001) (affirming administrative decision that student did not require special education services in reading and math despite opinion from medical doctor that the did need such services).

Based on the information available at the time of its evaluation, the district correctly determined the student was not eligible as a student with a disability. The student did not meet the criteria for Learning Disability because he did not have a severe discrepancy between ability

and achievement, nor was there documentation of basic psychological processing deficits. The student's good grades and test scores showed that he was succeeding in the regular education environment. Even if his grades were due partly to the hours the parents spent working with him in the evenings, the student's achievement on standardized tests demonstrated that he was able to learn and succeed without special education. The panel has considered the parents' evidence that suggested otherwise, including their observations and opinions of his reading and writing abilities, the documentation they presented of poor writing, and Dr. Cantor's report, but that is not sufficient to rebut the evidence from the district's formal evaluation that the student did not meet the legal definition of a student with a disability. In addition to not meeting the criteria for Learning Disability, the student did not meet the criteria for Other Health Impairment because there was insufficient evidence of adverse educational impact.

DECISION

The hearing panel majority concludes that the district's April 2005 evaluation was appropriate and, therefore, that the parents are not entitled to an independent educational evaluation at public expense. The majority further concludes that the multidisciplinary team's conclusion in its April 2005 evaluation, that the student did not qualify as a student with a disability, was correct based on the information and evaluation results available at the time. Accordingly, the majority finds in favor of the district with respect to the two issues raised at hearing.

APPEAL PROCEDURE

This is the final decision of the Department of Elementary and Secondary Education in this matter. A party has a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, §§536.010 *et seq.* RSMo. A party also has a right to challenge this decision by filing a civil action in federal or state court pursuant to the IDEA. *See* 20 U.S.C. §1415(i).

Dated: August 15, 2005

s/Kenneth M. Chackes
Kenneth M. Chackes
Chairperson

s/Terry Allee
Terry Allee
Panel Member

See Below
Jean Adams
Panel Member

Copies of this decision will be mailed to the parties on this date, by certified mail, return receipt requested.

DATE: 8/15/05

Jeannene M. W. Adams
4002 Ridge Drive
St. Peters, MO. 63303

COLE COUNTY vs.

Decision:

I disagree with the Hearing Panel.

Statement of Concern:

I am extremely apprehensive about the district's evaluation and whether or not it was appropriate.

As a hearing officer I would have suggested that there is a need for a very thorough, truly expert evaluation which would establish this young mans unique educational needs. I believe that the district neglected to look at the very real and fundamental needs which characterize dyslexic students. The family is part of the team and their testimony of how long and hard this young man has to work to keep his grades up was ignored.

The statement made by the Special Education Director (on page 219 of the transcripts)

"... every time you test a child, I am of firm opinion that you do harm to that child by giving them the message that something is wrong with them..."

I can say with complete assurance that this young man knew way before he was tested that he had a problem, his mother recognized the problem and is seeking assistance with the problem. We are doing all of the members of this team a disservice by stating that nothing further is needed.

Sincerely,

Jeannene M. W. Adams